

**IN THE UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF MISSOURI  
SOUTHERN DIVISION**

RICHARD F. SOBRILSKI,	)	
	)	
Petitioner,	)	
v.	)	Civil Action
	)	No.04-3339-CV-S-SOW-H
ROBERT McFADDEN, Warden,	)	
United States Medical Center for	)	
Federal Prisoners,	)	
	)	
Respondent.	)	

**REPORT AND RECOMMENDATION OF  
THE UNITED STATES MAGISTRATE JUDGE**

Petitioner has filed a Petition for Writ of Habeas Corpus, in which he challenges the sentence imposed in his criminal case. A show cause order was entered and a response and traverse were filed.

Plaintiff's allegations are proper, if at all, under Section 2255, Title 28, United States Code. Petitioner seeks to bypass that remedy and pursue his claim under § 2241. Petitioner has not established that the remedy provided in § 2255 is inadequate. He has not asserted a claim of actual innocence, and he has had an unobstructed procedural opportunity to challenge his conviction. In *Abdullah v. Hedrick*, 392 F.3d 957 (8<sup>th</sup> Cir. 2004), it is pointed out "It is well established that 'in order to establish a remedy is "inadequate or ineffective" under § 2255, there must be more than a procedural barrier to bringing a § 2255 petition.' *Id.* Furthermore, § 2255 is not inadequate or ineffective merely because the claim was previously raised in a § 2255 motion and denied, or because a remedy under that section is time-barred. *Lurie*, 207 F.3d at 1077."

For the foregoing reasons, it is, pursuant to the governing law and in accordance with Local Rule 72.1 of the United States District Court for the Western District of Missouri,

RECOMMENDED that petitioner be denied leave to proceed in forma pauperis, and that the petition herein for writ of habeas corpus be dismissed without prejudice.

/s/ James C. England  
**JAMES C. ENGLAND, CHIEF**  
**UNITED STATES MAGISTRATE JUDGE**

Date: March 29, 2006